

**MOORE & VAN ALLEN**  
A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

ELIZABETH L. RIPPETOE  
DIRECT DIAL 704-331-1079

NATIONS BANK CORPORATE CENTER  
100 NORTH TRYON STREET FLOOR 47  
CHARLOTTE, NORTH CAROLINA 28202-4003

TELEPHONE 704-331-1000  
FACSIMILE 704-331-1159

May 9, 1994

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MAY 10 1994 - 11 05 AM

INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Sir or Madam:

On behalf of Equipment Leasing Partners, I have enclosed two (2) original copies of the document described below, each fully executed and acknowledged, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The document is a Collateral Assignment of Equipment Lease Agreements dated as of March 1, 1993 (the "Assignment"), a primary document. The names and addresses of the parties to the Assignment are as follows:

Equipment Leasing Partners, as Assignor  
9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273

First Union National Bank of  
North Carolina, as Assignee  
Two First Union Plaza  
CC0-7-0145  
Charlotte, North Carolina 28288

A description of the equipment covered by the Assignment is set forth in Exhibit A to the Assignment. A description of the leases under which the equipment is leased by Equipment Leasing Partners as Lessor is set forth in Exhibit B to the Assignment.

A fee of \$18.00 is enclosed. Please return one original and any extra copies not needed by the Commission for recordation to me at the address listed above.

RECEIVED

MAY 10 1994

Secretary  
Interstate Commerce Commission  
May 9, 1994  
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A short summary of the Assignment to appear in the index follows:

The collateral covered by the Assignment includes the lessor's interest in the existing and any future leases of three locomotives and other yard equipment.

Yours truly,

MOORE & VAN ALLEN, PLLC

*Elizabeth L. Rippetoe*  
Elizabeth L. Rippetoe

ELR:vb

Enclosures

cc: (w/o enc.)

Charles B. Lee, Jr., Esq.  
(Counsel for First Union National  
Bank of North Carolina)  
Mark E. Carpenter, Esq.

MAY 10 1994 - 11 05 AM

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

INTERSTATE COMMERCE COMMISSION

**COLLATERAL ASSIGNMENT OF  
EQUIPMENT LEASE AGREEMENTS**

**THIS COLLATERAL ASSIGNMENT OF EQUIPMENT LEASE AGREEMENTS ("Assignment"), made as of the 1st day of March, 1993, by EQUIPMENT LEASING PARTNERS, a North Carolina general partnership (hereinafter referred to as "Assignor"), to FIRST UNION NATIONAL BANK OF NORTH CAROLINA, a national banking association (hereinafter referred to as "Assignee");**

**W I T N E S S E T H:**

A. Assignor is maker under that certain Promissory Note dated October 19, 1989 in the face amount of \$1,051,311.93 (the "\$ Note") payable to Assignee. The Note is secured, in part, by that certain Security Agreement dated October 19, 1989 (as amended, the "Security Instrument"), which Security Agreement has been amended and restated by that certain Amended and Restated Security Agreement dated as of even date.

B. The Security Instrument grants a security interest in that certain personal property and equipment which is more particularly described in Exhibit A attached hereto (the "Equipment"), together with certain leases and vehicles described therein.

C. Assignor and Cogentrix Carolina Leasing Corporation, a North Carolina corporation now known as Cogentrix of North Carolina, Inc. ("CNC") entered into an Equipment Lease Agreement dated October 31, 1987 (the "1987 Equipment Lease Agreement") by which Assignor leased to CNC certain equipment set forth therein.

D. Assignor and CNC have as of this date amended and restated the 1987 Equipment Lease Agreement by entering into and executing an Amended and Restated Equipment Lease Agreement (the "Amended and Restated Lease".) The leases described on the attached Exhibit B, whether or not amended and restated, together with all other leases, whether now existing or hereafter arising, relating to any of the Equipment including, without limitation, the Amended and Restated Lease, are referred to, collectively and individually, as the "Lease Agreements").

E. Assignor desires to confirm to Assignee that the Lease Agreements have been assigned to Assignee under and by virtue of the Security Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, Assignor hereby assigns to Assignee all of Assignor's right, title and interest, now existing or hereafter arising, under the Lease Agreements for the purpose of securing payment of the indebtedness evidenced by the Note, together with all other such sums with interest becoming due and payable to Assignee under the Note, the Security Instrument, this Assignment, or any other document evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (collectively and individually, the "Loan Documents") and for securing the performance and discharge of the other obligations, covenants and agreements of Assignor herein or in the other Loan Documents. The Assignor warrants that it is the sole owner of the entirety of the Lessor's interest under the Lease Agreements, that the Lease Agreements are valid and enforceable and that the certified copy of the form of Lease Agreement delivered herewith has not been altered, modified or amended in any manner whatsoever; that no party is in default under any of the terms, covenants or conditions thereof; that no rental proceeds under the Lease Agreements have been assigned or participated, except for the assignment provided for hereby.

ASSIGNOR COVENANTS THAT IT WILL faithfully abide by, perform and discharge each and every obligation, covenant and agreement under the Lease Assignment required to be observed or performed by Assignor; to give prompt notice to Assignee of any notice of default under the Lease Agreements received by or given to Assignor, together with an accurate and complete copy of such notice of default; to enforce, at the sole cost and expense of Assignor, without terminating the Lease Agreements, the performance of each and every obligation, covenant, condition and agreement of the respective Lessee under the Lease Agreements; to assign and transfer to the Assignee any and all subsequent Lease Agreements for all or any part of the Equipment; and to execute and deliver at the request of the Assignee all such further assurances and assignments to effectuate this Assignment as the Assignee shall from time to time reasonably require.

ASSIGNOR FURTHER COVENANTS THAT IT hereby grants, assigns, and conveys a security interest in and to all of its right, title and interest in and to any and all earnest money deposits, binders, and escrows furnished by the respective Lessee under each Lease Agreement (collectively hereinafter referred to as the "Escrow Deposit"); and in the event for any reason during the term of the Note all or any portion of the Escrow Deposit shall be payable to Assignor or its assigns all such portions of the Escrow Deposit shall be paid directly to Assignee, and upon receipt Assignee shall apply same in accordance with the terms of Paragraph Two (2) hereof.

ASSIGNOR FURTHER COVENANTS THAT IT WILL NOT modify or in any way alter the terms of any Lease Agreement without the prior written consent of Assignee, which consent shall not be unreasonably withheld; cancel or terminate any Lease Agreement; do or permit anything to impair the security of any Lease Agreement; execute any other assignment of the Lessor's interest in the Lease Agreements or the Equipment; subordinate any Lease Agreement to any security interest, or any other encumbrance, or permit, consent or agree to any such subordination without Assignee's prior written consent; or consent to any assignment of or other transfer of Lessor's interest under any Lease Agreement (whether or not in accordance with its terms) without the prior written consent of the Assignee.

THIS COLLATERAL ASSIGNMENT is also made on the following terms, covenants and conditions:

1. Performance. So long as there shall have not occurred a "Lessor Default" (as defined in Paragraph 3 below), Assignor shall have the sole right and responsibility to perform and to exercise the rights and responsibilities and to enjoy the benefits of Lessor as set forth in the Lease Agreement.

2. Assignee's Remedies. Upon the occurrence of any Lessor Default (as defined in Paragraph Three (3) below), the Assignee may exercise all rights and remedies contained herein, in the Security Instrument, and in any other agreement securing the Note, and Assignee, without in any manner waiving such Lessor Default, may at its option, without notice and without regard to the adequacy of the security for said indebtedness (subject to the limitations hereinafter provided), either in person, by agent or by a receiver appointed by the court, take possession of the Equipment and exercise such rights and responsibilities of Lessor under the Lease Agreements on such terms and for such period of time as the Assignee may deem proper, and, either with or without taking possession of said Equipment, Assignee may demand, sue for or otherwise collect and receive all rental proceeds and profits payable by Lessees under the Lease Agreements, (which right may be exercised upon Assignee's giving written notice to a respective Lessee to make all rental payments directly to Assignee) and to apply such proceeds to the payment of (a) all expenses of owning, operating and renting the Equipment, including, but not limited to, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable and all reasonable expenses of operating, renting and maintaining (as applicable) the Equipment, including, but not limited to, all taxes, charges, claims, assessments, and any other liens and premiums for insurance which the Assignee may

deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Equipment, (b) the expense of liquidating any liens, security interests, attachments or encumbrances superior to the security interests herein created, and (c) the indebtedness evidenced by the Note and secured hereby and by the Security Instrument, together with all costs and reasonable attorneys' fees actually incurred, as provided therein, in such order of priority as Assignee in its sole discretion may determine, notwithstanding any statute, law, custom or usage to the contrary. Exercise by Assignee of the option granted it in this paragraph and the collection of the rental proceeds, and the application thereof as herein provided, shall not be considered a waiver of any Event of Default under the Loan Documents. The possessory rights granted to Assignee under the terms of this Assignment are intended to be remedies for Lessor Default in addition to those which are set forth in the Security Instrument.

3. Lessor Default. As set forth in Article VI of the Lease Agreements, Lessee and Lessor have agreed to give each other notices of defaults (a "Default Notice") (the occurrence of which Lease Default Notice and the expiration of any cure period as may be set forth in the Lease Agreement is referred to herein as a "Lease Agreement Default"). In the event there shall occur either (a) Lease Agreement Default, or (b) an Event of Default (following the expiration of any applicable cure periods) as set forth in the Loan Agreement (sometimes these events are respectively referred to herein as a "Loan Default"), the Assignee is hereby vested with full power to use all measures, legal and equitable, and take any action deemed by it necessary or proper to enforce this Assignment and to collect rental proceeds assigned hereunder, including the right (but not the obligation) to take possession of the Equipment to the extent necessary to effect the cure of any default on the part of the Assignor as Lessor under any Lease Agreement. Further provided, upon the occurrence of any Lease Default Notice, Assignor hereby agrees that Assignee shall have the joint and several right (but not obligation) with Assignor to take such action and remedies as shall be necessary to cure such default, if any, and so long as any indebtedness shall remain outstanding under the Loan Documents, Assignor shall direct all lessees to give concurrent notice of default to Assignee.

4. No Obligation by Assignee. The Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Lease Agreement and Assignor shall and does hereby agree to indemnify the Assignee, its agents and employees, against and hold them harmless from any and all liability, loss

or damage which they may or might incur under any Lease Agreement, or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against them by reason of any alleged obligation or undertaking on the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in any Lease Agreement; provided however, that nothing contained herein shall require Assignor to indemnify Assignee for the gross negligence or willful misconduct of Assignee, its agents and employees. Should Assignee, its agents or employees, incur any such liability, loss or damage under any Lease Agreement or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees actually incurred, shall be secured hereby and by the Security Instrument above described, and Assignor shall reimburse the Assignee therefor within ten (10) days after written demand for reimbursement is made upon Assignor, and upon failure of Assignor to do so, Assignee may at its option declare all sums secured hereby and by the Security Instrument immediately due and payable. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to consummate the re-rental or sale of the Equipment after a Lessor Default has occurred or from any other act or omission of Assignee in managing or seeking to sell, transfer or convey any Equipment after a Lessor Default has occurred unless such loss is caused by the gross negligence, willful misconduct or bad faith of the Assignee. It is further understood that this Assignment shall not operate to place responsibility upon Assignee for the control, care, operation or repair of the Equipment or for the carrying out of any one or more of the terms and conditions of any Lease Agreement, nor shall it operate to make Assignee responsible or liable for any waste committed with respect to the Equipment by the Assignor or any other persons, or for any dangerous or defective condition of the Equipment, or for any negligence in the operation, cleaning, upkeep, repair or control of the Equipment resulting in loss or injury or death to any lessee, licensee, employee or other person. Anything contained in this Paragraph to the contrary notwithstanding, in no event shall Assignor be responsible to indemnify or reimburse Assignee, its agents and employees, of and from any claims, expenses, costs or damages which may arise directly as a result of the gross negligence, willful misconduct or bad faith by Assignee, its agents or employees.

5. No Waiver. Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The rights of Assignee to collect said

indebtedness and to enforce any other security therefor may be exercised by Assignee either prior to, simultaneously with or subsequent to any action taken by it hereunder.

6. Binding Nature. This Assignment, together with the covenants and warranties herein contained, shall inure to the benefit of Assignee and any subsequent holder of the Note and Security Instrument, and shall be binding upon Assignor and its successors and assigns and any subsequent owner of the Equipment. The Assignee shall have the right to assign all of its right, title and interest in the Lease Agreements to any subsequent holder of the Note and Security Instrument, subject to the provisions of this Assignment, and to assign the same to any person acquiring title to the Equipment, or any portion thereof, through foreclosure under the Security Instrument or otherwise. After the Assignor shall have been barred and foreclosed of any right, title and interest and equity of redemption in said Equipment, or any portion thereof, no assignee of the Assignor's interest in the Lease Agreements shall be liable to account to the Assignor for the proceeds under the Lease Agreements.

7. Proceeds. All rental proceeds and profits received by Assignee under any Lease Agreement shall be applied in accordance with the application provisions set forth in Paragraph Two (2) above; provided however, following the disposal (by private or public sale, and at which public sale Assignee may be the purchaser) by Assignee of Assignor's interests under the Lease Agreement, either pursuant to the foreclosure provisions of this Assignment or under the Security Instrument, Assignor shall be barred and foreclosed of any right, title and interest and equity of redemption under the Lease Agreements, and Assignee shall have no further responsibility to account to Assignor for the proceeds under the Lease Agreements.

8. Release. The Assignee may take or release other security for the payment of the principal sum, interest and indebtedness evidenced by the Note, may release any party primarily or secondarily liable therefor, and may apply other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to its rights hereunder.

9. Cancellation. Upon payment in full of all indebtedness secured hereby, as may be evidenced by the filing of UCC Termination Statements covering the Equipment, this Assignment shall automatically become void and of no effect. Also, this Assignment may be cancelled by the Assignee indicating that it has been cancelled on its face and signing the same.

10. Notices. All notices required to be given hereunder shall be in writing and shall be deemed served at the earlier



of (i) receipt or (ii) the third (3rd) business day after deposit in United States mail, registered or certified, postage prepaid and addressed to the parties at the following addresses, or such other addresses as may from time to time be designated by written notice given as herein required:

To Assignor:

Equipment Leasing Partners  
9405 Arrowpoint Boulevard  
Charlotte, North Carolina 28273-8110

Attention: Fred E. Reed

With Copy to:

Moore & Van Allen  
NationsBank Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28202-4003

Attention: Stephen D. Hope, Esquire

To Assignee:

First Union National Bank of North Carolina  
Corporate Banking Group - CCO-7-0145  
301 S. Tryon Street  
Charlotte, North Carolina 28288

Attention: Mary T. Mack

With Copy to:

Parker, Poe, Adams & Bernstein  
2600 Charlotte Plaza  
Charlotte, North Carolina 28244

Attention: W. Samuel Woodard, Esq.

Any notice sent to the Assignor at its address set forth herein shall be deemed notice to all partners of Assignor. Personal delivery to a party or to any officer, partner, agent or employee of such party at its address herein shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. No notice of change of address shall be effective until the date of receipt thereof.


11. North Carolina Law. This Assignment shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and sealed in its name all by authority duly given, this the day and year first above written.

ASSIGNOR:

EQUIPMENT LEASING PARTNERS, a  
North Carolina General Partnership  
[SEAL]

By:

 [SEAL]  
Frank J. Benner,  
Authorized Agent for all  
General Partners

WSW/530/nws

**EXHIBIT A**  
**TO COLLATERAL ASSIGNMENT**  
**OF EQUIPMENT LEASE AGREEMENTS**  
**FIRST UNION NATIONAL BANK OF NORTH CAROLINA**  
**AND**  
**EQUIPMENT LEASING PARTNERS,**  
**A NORTH CAROLINA GENERAL PARTNERSHIP**

**Equipment**

- 1 - EMD SW-1200, S/N 4484-6 with  
Caterpillar Engine Model 3512
- 1 - EMD SW-1200, S/N 4484-9 with  
Caterpillar Engine Model 3512
- 1 - US Equipment Loading Hopper  
S/N 87117101011
- 1 - US Equipment 30" x 80' Radial  
Stacking Conveyor Model  
#US 3080RS, S/N 87118
- 2 - US Equipment 30" x 80' Field  
Conveyors Model US3080FC  
S/N 8719, 87120
- 1 - New Michigan Loader Model L-70  
S/N 60130
- 1 - New Michigan Loader Model L-90  
S/N 60170
- 1 - General Electric 45 Ton Switching  
Locomotive S/N 27932
- 1 - New Michigan Loader Model L-90  
S/N 60186
- 4 - 1990 White GMC Volvo Model WSA64T S/N:  
4VIVDBJFILN625976  
4VIVDBJFXLN625975  
4VIVDBJF\*LN625974  
4VIVDBJF6LN625973
- 4 - 1989 TI-Book Frameless Dump Trailer S/N:  
1T9EAAS20KGO21748  
1T9EAAS29KGO21747  
1T9EAAS27KGO21746  
1T9EAAS2XKG021742

- 1 - Caterpillar D5H Tractor  
S/N 8RC01953
- 1 - Caterpillar CSR338 Vibratory Compactor  
S/N IMG00066
- 1 - 1989 GMC Model TC1090 Pickup Truck  
S/N 2GTEC14C4K1533516

**EXHIBIT B**  
**TO COLLATERAL ASSIGNMENT OF EQUIPMENT LEASE AGREEMENT**  
**OF EQUIPMENT LEASE AGREEMENTS**  
**FIRST UNION NATIONAL BANK OF NORTH CAROLINA**  
**AND**  
**EQUIPMENT LEASING PARTNERS,**  
**A NORTH CAROLINA GENERAL PARTNERSHIP**

**Other Encumbrances**

1. Equipment Lease Agreement between Equipment Leasing Partners and James River Cogeneration Company dated October 31, 1987. --
2. Amended and Restated Equipment Lease Agreement between Equipment Leasing Partners and Cogentrix of North Carolina, Inc. dated March 1, 1993.
3. Equipment Leasing Agreement between Equipment Leasing Partners and ReUse Technology, Inc. dated September 30, 1989.

NORTH CAROLINA

MECKLENBURG COUNTY

I, Lori T. Hadick, a Notary Public for said County and State, do hereby certify that Frank J. Benner, attorney in fact for George T. Lewis, Jr. as a general partner of Equipment Leasing Partners, a North Carolina partnership (the "Partnership") personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said George T. Lewis, Jr. as a general partner of the Partnership and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Mecklenburg, State of North Carolina, on the 3/5<sup>th</sup> day of August, 1993, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Frank J. Benner acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of said George T. Lewis, Jr. as a general partner of the Partnership.

Witness my hand and official seal, this the 3/5<sup>th</sup> day of August, 1993.

(Official Seal)

Lori T. Hadick  
Notary Public

My commission expires April 3, 1997 1993.